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Regional Counsel

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San Francisco, CA 94105  
(415) 972-3882



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	
	)	Docket Nos. CAA-09-2020-0062
	)	FIFRA-09-2020-0061
Phoenix V, LLC	)	
d/b/a BEI Hawaii	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Phoenix V, LLC d/b/a BEI Hawaii (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), for the assessment of a civil administrative penalty against Respondent for violations of Section 112(r) of the CAA; and Section 14(a) of the Federal Insecticide, Fungicide, and

Rodenticide Act (“FIFRA”), as amended, 7 U.S.C §§ 136 *et seq.*, for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of FIFRA.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a Hawaii limited liability company whose principal offices are located at 311 Pacific Street in Honolulu, Hawaii.

#### **B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

##### **CAA § 112(r)**

4. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130.
5. Chlorine is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. *See* 40 C.F.R. § 68.130, Table 3.
6. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 - 68.185.
7. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.10(i), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Health and Safety Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).

8. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.
9. Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
10. Section 302(g) of the CAA, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
11. The Administrator of EPA may assess against any person who violates any provision of CAA § 112(r) a civil penalty of up to \$48,192 for each offense that occurred after November 2, 2015. *See* Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 85 Fed. Reg. 1751 (January 13, 2020).
12. In a letter dated August 20, 2020, the U.S. Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

## **FIFRA**

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if its label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate to protect health and the environment.
15. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
18. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
19. Under 40 C.F.R. § 156.10(a)(4)(ii)(A), “[w]hen any registered pesticide product is transported in a tank car, tank truck or other mobile or portable bulk container, a copy of the accepted label must be attached to the shipping papers, and left with the consignee at the time of delivery.”

20. Under 40 C.F.R. § 156.10(a)(4)(ii)(B), “[w]hen pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve.”
21. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), provides that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.
22. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$20,288 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 85 Fed. Reg. 1751 (January 13, 2020).

### C. ALLEGATIONS

23. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 302(e) of CAA, 42 U.S.C. § 7602(e), and Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

### CAA § 112(r)

#### Count 1

(Violation of 40 C.F.R. § 68.69(a)(3))

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

25. At all times relevant to this CAFO, Respondent operated a facility (the “Hilo Facility”) located at 430 Kekuanaoa Street in Hilo, Hawaii to store and distribute pesticides, fertilizers, and industrial chemicals, including chlorine.
26. The real property and improvements thereto located at the Hilo Facility are a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).
27. At all times relevant to this CAFO, the Hilo Facility produced, used or stored more than 10,000 pounds of chlorine and was subject to the requirements of CAA § 112(r)(7).
28. At all times relevant to this CAFO, the Hilo Facility was subject to Program 3 requirements because it was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.
29. Respondent was required, pursuant to Section 112(r)(7) of the CAA and 40 C.F.R. § 68.69(a)(3), to develop and implement written operating procedures that address precautions necessary to prevent exposure, including personal protective equipment.
30. From or about September 2016 through September 2018, Respondent failed to adequately address personal protective equipment to be used in the event of an accidental release of regulated toxic substances in its standard operating plan for the Hilo Facility.
31. Therefore, EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(a)(3).

Count 2

(Violation of 40 C.F.R. § 68.95(a)(3))

32. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were set forth here in their entirety.

33. Respondent was required, pursuant to Section 112(r)(7) of the CAA and 40 C.F.R. § 68.95(a)(3), to develop and implement an emergency response program that included training for all employees in relevant procedures.
34. From or about September 2016 through September 2018, Respondent failed to train its employees at the Hilo Facility in relevant procedures for responding to an accidental release of regulated toxic substances.
35. Therefore, EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.95(a)(3).

## **FIFRA**

### Count 3

(Violation of FIFRA § 12(a)(1)(E))

36. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
37. On or about March 18, 2018, a tank truck operated by Respondent refilled a bulk storage tank containing “Hypochlor NaOCL” at the Makiki Swimming Pool in Honolulu, Hawaii.
38. “Hypochlor NaOCL” is intended to prevent and/or destroy bacteria and other microorganisms.
39. “Hypochlor NaOCL” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and assigned EPA Reg. No. 72315-6-3579.
40. On or about March 18, 2018, Respondent failed to leave a copy of the EPA-accepted label with the Makiki Swimming Pool at the time of delivery of “Hypochlor NaOCL” or

attach a copy of the EPA-accepted label for “Hypochlor NaOCL” to the bulk storage tank at the Makiki Swimming Pool.

41. Respondent’s failure to leave or attach a copy of the EPA-accepted label constitutes a violation of 40 C.F.R. § 156.10(a)(4)(ii) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 4

(Violation of FIFRA § 12(a)(1)(E))

42. Paragraphs 1 through 23 and 36 through 41 above are incorporated herein by this reference as if they were set forth here in their entirety.
43. In or about September 2018, a tank truck operated by Respondent refilled a bulk storage tank containing “Hypochlor NaOCL” at Steiner Hawaii, Inc. d/b/a Alsco (“Alsco”) at 2771 Waiwai Loop in Honolulu, Hawaii.
44. In or about September 2018, Respondent failed to leave a copy of the EPA-accepted label with Alsco at the time of delivery of “Hypochlor NaOCL” or attach a copy of the EPA-accepted label for “Hypochlor NaOCL” to the bulk storage tank at Alsco.
45. Respondent’s failure to leave or attach a copy of the EPA-accepted label constitutes a violation of 40 C.F.R. § 156.10(a)(4)(ii) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 5

(Violation of FIFRA § 12(a)(2)(G))

46. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.



47. On or about September 22, 2016, a release of “SUNNY SOL CHLORINE - Liquefied Gas Under Pressure” (“SUNNY SOL CHLORINE”) occurred at the Hilo Facility.
48. “SUNNY SOL CHLORINE” is intended to prevent and/or destroy bacteria and other microorganisms.
49. “SUNNY SOL CHLORINE” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and assigned EPA Reg. No. 1744-10.
50. The EPA-accepted label on “SUNNY SOL CHLORINE” states that “in case of a spill or leak, handlers must wear a full-face canister-style (gas mask) respirator . . . OR a self-contained breathing apparatus. . . . [G]loves and respirator of a type specified above must be available and are required for anyone entering into an affected area in the event of a leak or spill.”
51. During the release of “SUNNY SOL CHLORINE” on or about September 22, 2016, three of Respondent’s employees at the Hilo Facility failed to wear respirators or self-contained breathing apparatuses when they entered into the area affected by the leaking cylinder of “SUNNY SOL CHLORINE.”
52. Respondent’s failure to have its employees wear a respirator or self-contained breathing apparatus when they entered into the affected area of the leaking cylinder of “SUNNY SOL CHLORINE” at the Hilo Facility constitutes a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136(j)(a)(2)(G).

Count 6

(Violation of FIFRA § 12(a)(2)(G))

53. Paragraphs 1 through 23 and 46 through 52 above are incorporated herein by this reference as if they were set forth here in their entirety.
54. On or about September 23, 2016, a release of “SUNNY SOL CHLORINE” occurred at the Hilo Facility.
55. During the September 23, 2016 release of “SUNNY SOL CHLORINE” at the Hilo Facility, Respondent’s employee moved a tote containing a leaking cylinder of “SUNNY SOL CHLORINE” using a forklift without wearing a respirator or self-contained breathing apparatus.
56. Respondent’s failure to have its employee wear a respirator or self-contained breathing apparatus when he moved the leaking cylinder of “SUNNY SOL CHLORINE” at the Hilo Facility using a forklift constitutes a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136(j)(a)(2)(G).

Count 7

(Violation of FIFRA § 12(a)(2)(G))

57. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
58. At all times relevant to this CAFO, Respondent operated a facility (the “Honolulu Facility”) located at 311 Pacific Street in Honolulu, Hawaii that stored and distributed pesticides and other products.
59. On or about November 20, 2019, an inspector from Hawaii Department of Agriculture (“HDA”) conducted a Producer Establishment Inspection of the Honolulu Facility.

60. During the November 20, 2019 inspection, the HDA inspector observed unsecured cylinders of “Meth-O-Gas Q” on a shelf at the Honolulu Facility.
61. “Meth-O-Gas Q” is a fumigant intended to prevent and/or destroy insects and other organisms.
62. “Meth-O-Gas Q” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and assigned EPA Reg. No. 5785-41.
63. The EPA-approved label on “Meth-O-Gas Q” instructs users to “store . . . under lock and key. Store . . . secured to a rack or wall to prevent tipping.”
64. On or about November 20, 2019, Respondent failed to secure “Meth-O-Gas Q” to a rack or wall to prevent tipping during its storage.
65. Respondent’s failure to secure “Meth-O-Gas Q” to a rack or wall during its storage constitutes a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Count 8

(Violation of FIFRA § 12(a)(2)(G))

66. Paragraphs 1 through 23 and 57 through 65 above are incorporated herein by this reference as if they were set forth here in their entirety.
67. During the November 20, 2019 inspection, the HDA inspector observed a cylinder of “ProFume Gas Fumigant” leaning against a cart in the storage area of the Honolulu Facility.
68. “ProFume Gas Fumigant” is intended to prevent and/or destroy insects and other organisms.

69. “ProFume Gas Fumigant” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and assigned EPA Reg. No. 1015-79.
70. The EPA-approved label on “ProFume Gas Fumigant” instructs users that “all cylinders should be stored in an upright position. Secure ProFume cylinders to prevent being knocked over during storage.”
71. On or about November 20, 2019, Respondent failed to store a cylinder of “ProFume Gas Fumigant” in an upright position.
72. Respondent’s failure to store “ProFume Gas Fumigant” in an upright position constitutes a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

#### D. RESPONDENT’S ADMISSIONS

73. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives, for the purpose of this proceeding in Docket Nos. CAA-09-2020-0062 and FIFRA-09-2020-0061, any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### E. CIVIL ADMINISTRATIVE PENALTY

74. Respondent agrees to the assessment of a penalty in the amount of \$77,432 for the CAA 112(r) claims set forth herein and \$49,777 for the FIFRA claims set forth herein for the

total penalty of ONE HUNDRED TWENTY-SEVEN THOUSAND TWO HUNDRED AND NINE DOLLARS (\$127,209), plus interest, as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.

75. Respondent shall pay the assessed penalty according to the terms of this CAFO and Attachment 1, attached hereto, which specifies an installment payment plan and interest schedule.<sup>1</sup> Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York

City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency."

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<sup>1</sup> This installment payment plan is based on Respondent's certification that the COVID-19 public health emergency has negatively impacted Respondent's financial health. Any false statement made in the certified statement may result in voiding the penalty portion of this CAFO.

c. Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

d. ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 — checking  
Environmental Protection Agency  
Account 310006  
CTX Format

e. Online Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)  
Enter "sfo1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send by e-mail a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Armsey.steven@epa.gov

Julie Jordan  
Enforcement and Compliance Assurance Division (ENF-4-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Jordan.julie@epa.gov

76. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
77. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 74 by the deadlines specified in Attachment 1 of this CAFO, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues plus the remaining balance of the penalty sum specified in Paragraph 74 upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadlines specified in Attachment 1 of this CAFO may lead to any or all of the following actions:
  - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadlines specified in Attachment 1 of this CAFO. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. CERTIFICATION OF COMPLIANCE

- 78. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any CAA § 112(r) and FIFRA requirements that may apply to its ongoing operations.



#### G. RETENTION OF RIGHTS

79. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.
80. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### H. ATTORNEY'S FEES AND COSTS

81. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

#### I. EFFECTIVE DATE

82. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

#### J. BINDING EFFECT

83. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
84. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, PHOENIX V, LLC D/B/A BEI HAWAII

8/28/20  
DATE

Philip Carper  
NAME: Philip Carper  
TITLE: Environmental Compliance officer

FOR COMPLAINANT, EPA REGION IX:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Claire Trombadore  
Assistant Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

FOR RESPONDENT, PHOENIX V, LLC D/B/A BEI HAWAII

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

FOR COMPLAINANT, EPA REGION IX:

**AMY MILLER-  
BOWEN**

Digitally signed by AMY  
MILLER-BOWEN  
Date: 2020.09.15 15:14:21  
-07'00'

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Amy C. Miller-Bowen  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

## II. FINAL ORDER

Complainant and Respondent, Phoenix V, LLC d/b/a BEI Hawaii, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2020-0062; FIFRA-09-2020-0061) be entered, and that Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED TWENTY-SEVEN THOUSAND TWO HUNDRED AND NINE DOLLARS (\$127,209), plus interest, and comply with the terms and conditions set forth in the Consent Agreement.

\_\_\_\_\_  
  
DATE

**Steven L.  
Jawgiel**

Digitally signed by Steven  
L. Jawgiel  
Date: 2020.09.21 10:45:37  
-07'00'

Steven Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

**ATTACHMENT 1**

**INSTALLMENT PAYMENT AND INTEREST SCHEDULE**

**DOCKET NO. CAA-09-2020-0062; FIFRA-09-2020-0061**

<b>Principal</b>	<b>Days</b>	<b>Interest Payment</b>	<b>Principal</b>	<b>Installment Payment</b>
\$127,209.00	30	\$0	\$21,201.50	\$21,201.50
\$106,007.50	90	\$530.04	\$21,201.50	\$21,731.54
\$84,806.00	60	\$282.69	\$21,201.50	\$21,484.19
\$63,604.50	60	\$212.02	\$21,201.50	\$21,413.52
\$42,403.00	60	\$141.34	\$21,201.50	\$21,342.84
\$21,201.50	60	\$70.67	\$21,201.50	\$21,272.17
<b>Totals</b>	<b>360</b>	<b>\$1,236.75</b>	<b>\$127,209.00</b>	<b>\$128,445.75</b>

**1<sup>st</sup> Installment: \$21,201.50 (Due within 30 days of the effective date of the CAFO)**

**2<sup>nd</sup> Installment: \$21,731.54 (Due within 90 days after the deadline for the first installment payment)**

**3<sup>rd</sup> Installment: \$21,484.19 (Due within 60 days after the deadline for the second installment payment)**

**4<sup>th</sup> Installment: \$21,413.52 (Due within 60 days after the deadline for the third installment payment)**

**5<sup>th</sup> Installment: \$21,342.84 (Due within 60 days after the deadline for the fourth installment payment)**

**6<sup>th</sup> Installment: \$21,272.17 (Due within 60 days after the deadline for the fifth installment payment)**

**Total Payment: \$128,445.75**

## **CERTIFICATE OF SERVICE**

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of Phoenix V, LLC d/b/a BEI Hawaii (FIFRA-09-2020-0061; CAA-09-2020-0062) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT: Philip Carper  
Environmental Compliance Officer  
Pcarper@beihawaii.com

Lisa A. Bail, Esq.  
Goodsill, Anderson, Quinn & Stifel  
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FOR COMPLAINANT: David Kim  
Assistant Regional Counsel  
U.S. EPA, Region IX  
Kim.David@epa.gov

Date: \_\_\_\_\_

\_\_\_\_\_  
Steven Armsey  
Regional Hearing Clerk  
EPA - Region IX